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Overview

Introduction (UNREAD TAGLINE)

Times, N. Y. (19**78**, May 5). Excerpts from Carter's speech to the bar Association. *The New York Times*. https://www.nytimes.com/1978/05/05/archives/excerpts-from-carters-speech-to-the-bar-association-overlawyered.html //SJ

I have inspected many prisons arid I know that nearly all inmates are drawn from the ranks of the powerless and the poor. A child of privilege frequently receives the benefit of the doubt; a child of poverty seldom does. In many courts, plea-bargaining serves the convenience of the judge and lawyers, not the ends of justice, because the courts lack the time to give everyone a fair trial.

Because, as Jimmy Carter asserts, it is those most in need of justice that are deprived of it because of plea bargains, I negate the resolution. Resolved: In the United States Criminal Justice System, plea bargaining is just.

Definitions and Observations

I Offer One Definition

Deep, P. (20**23**, April 30). *Diminishing the spotlight of trial: The scope of plea bargaining in criminal justice system*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4626566 //SJ

According to Black's Law Dictionary, 'plea bargaining' is a form of negotiation between a defendant and a prosecutor in which the defendant pleads guilty to the crime or one of the many charges. In return, the prosecutor recommends a lesser punishment or charges the defendant with a lenient charge. In other words, the defendant waives his valuable right to a full trial for a lesser punishment. This article attempts to examine the role of plea bargaining in the criminal justice system and contends that plea bargaining is not befitting in the criminal justice system.

Second, I offer an observation.

Plea Bargaining's Prevalence Ordains MAXIMUM Weight for Impacts

Devers, L. & CSR, Incorporated. (20**11**). Plea and charge bargaining Research summary. In *CSR, Incorporated* [Research summary]. https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/pleabargainingresearchsummary.pdf

According to the Bureau of Justice Statistics (2005), in 2003 there were 75,573 cases disposed of in federal district court by trial or plea. Of these, about 95 percent were disposed of by a guilty plea (Pastore and Maguire, 2003). While there are no exact estimates of the proportion of cases that are resolved through plea bargaining, scholars estimate that about 90 to 95 percent of both federal and state court cases are resolved through this process (Bureau of Justice Statistics, 2005; Flanagan and Maguire, 1990).

Framework

As implied by the resolution, I value

Justice, Defined

*John Rawls (**Stanford Encyclopedia of Philosophy**)*. (20**21**, April 12).
https://plato.stanford.edu/entries/rawls

John Rawls (b. 1921, d. 2002) was an American political philosopher in the liberal tradition. His theory of *justice* **as fairness** describes a society of free citizens holding equal basic rights and cooperating within an egalitarian economic system. His theory of *political liberalism* explores the legitimate use of political power in a democracy, and envisions how civic unity might endure despite the diversity of worldviews that free institutions allow. His writings on *the law of peoples* set out a liberal foreign policy that aims to create a permanently peaceful and tolerant international order.

My Value Criterion is Rawls' Original Position

*Original position (**Stanford Encyclopedia of Philosophy**)*. (20**23**, October 24).
https://plato.stanford.edu/entries/original-position

The original position is a central feature of John Rawls's social contract account of justice, "justice as fairness," set forth in *A Theory of Justice* (TJ). The original position is designed to be a fair and impartial point of view that is to be adopted in our reasoning about fundamental principles of justice. In taking up this point of view, we are to imagine ourselves in the position of free and equal persons who jointly agree upon and commit themselves to principles of social and political justice for a well-ordered democratic society. The main distinguishing feature of the original position is "the veil of ignorance": To ensure complete impartiality of judgment, the parties are deprived of all knowledge of their personal characteristics and conceptions of the good, and of social and historical circumstances. They do know of certain fundamental interests they all have in exercising their moral powers, plus general facts about psychology, economics, political sociology, biology, and other social and natural sciences. The parties in the original position are presented with a list of the major conceptions of justice drawn from the tradition of social and political philosophy and are assigned the task of choosing from among these the conception of justice that best enables them to effectively pursue their final ends and commitments and their fundamental interests. Rawls contends that the most rational decision for the parties in the original position are the two principles of justice: The first principle guarantees the equal basic rights and liberties needed to secure the fundamental interests of free and equal citizens and to pursue a wide range of conceptions of the good. The basic liberties include freedom of conscience, thought, expression, and association; freedom and integrity of the person with the right to hold personal property; equal political liberties, and rights protected by the rule of law. The second principle regulates permissible social and economic inequalities: first it provides fair equality of educational, employment, and cultural opportunities that enable all to develop their capacities and fairly compete for social positions of office and responsibility. Next, the second principle requires economic inequalities of income, wealth, powers and prerogatives to be arranged to maximally benefit the least advantaged members of society, making them better off than they would be in any alternative economic system (the difference principle.)

Prefer this criterion for two reasons:

1. Justice Must Be Substantive

Rawls, J. (19**71**). *A theory of justice*. https://doi.org/10.2307/j.ctvjf9z6v

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. Therefore in a just society the liberties of equal citizenship are taken as settled; 3 the rights secured by justice are not subject to political bargaining or to the calculus of social interests. The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising

Through analyzing on deontology rooted in substantive struggles, the negative provides a narrative founded on pragmatic analysis of genuine human conditions, prefer this

2. Philosophical Leaders Would Vote For Rawls' Criterion

Eryılmaz, E. (20**19**). A CRITICAL ASSESSMENT OF JOHN RAWLS'S THEORY OF JUSTICE AS FAIRNESS. In Middle East Technical University, *Middle East Technical University* [Thesis]. http://etd.lib.metu.edu.tr/upload/12623340/index.pdf

The original position reflects the parties' considered judgments in effect. It helps to formulate the principles of justice relying on the conditions and considered judgments; because Rawls states that "reflective equilibrium works through the original position."5 So the initial situation frames the terms and constraints of the principles. In Pogge's words, "we can think of the original position as a metacriterion of justice."1 So, the original position defines the reasonable and rational conditions of justice as fairness. The contracting representatives then choose the principles consistent with the meta-criterion of the original position in reflective equilibrium. Hence these principles of justice should match considered judgments of the parties as well. On the one hand, the parties revise their considered convictions according to the principles, and the reverse; on the other hand, they choose the principles consistent with the original position. The parties keep on this process until they come to a state of equilibrium.

Contention 1: Statutory Injustice

Plea bargaining contributes to a platform of injustice in the very system it contends to benefit. Three Reasons:

Subpoint A: Erroneous convictions

Coercive and Non-Indicative Outcomes

Lundberg, A. (2024). Do prosecutors induce the innocent to plead guilty? *Economic Inquiry*, *62*(2), 650–674. https://doi.org/10.1111/ecin.13203

The implications of a strategic model of plea bargaining are threefold. First, plea bargaining unequivocally increases wrongful convictions [and]. Next, partial bans on plea bargaining reduce the frequency of wrongful convictions, and the reduction rises with the strength of the ban. Lastly, police share an important role in minimizing wrongful convictions.

Wrongful Convictions Violate Liberty and Human Rights

Pakosta, A. (2025, June 2). The human rights violation of wrongful convictions in the U.S. *HRRC*. https://www.humanrightsresearch.org/post/the-human-rights-violation-of-wrongful-convictions-in-the-u-s

Wrongful convictions are not only a threat to our criminal justice system but also a grave infringement of human rights. When someone is imprisoned for a crime that they did not commit, they are deprived of several fundamental human rights, including the right to liberty, the presumption of innocence, the right to a fair trial, and the right to freedom from arbitrary detention. Furthermore, the individual who truly committed the crime is free to victimize others.

Remember Rawls' first principle of justice, and weigh this as a salient harm

Subpoint B: Classism:

Wealth-Obstructed Justice

Stauffer, E. (2021). Plea bargains: Justice for the wealthy and fear for the innocent. *Brigham Young University Prelaw Review*, https://scholarsarchive.byu.edu/byuplr/vol35/iss1/14

Supreme Court precedence requires that under the Fourteenth Amendment, the poor must have equal access to the criminal justice system. If poverty restricts a person from a part of the justice system, states must remedy that flaw. Although the historical court rulings have left states to decide how to remedy such unequal access, I suggest several remedies. Under these proposals, state reforms create a more equal justice system and will restore equal protection under the constitution.

<<Eighteen Pages Omitted>>>

The costs inherent in pretrial detention, trial penalties, and court appearances in combination with flaws in the system – such as overburdened public defenders and the creation of inherent psychological distress for defendants – keep poor defendants from going to trial. This unequal access to trial violates the Fourteenth Amendment. The Supreme Court has not only recognized a constitutional right to a trial by jury but has also recognized on numerous occasions the poor's disadvantage in the criminal justice system. Historical precedence shows that when the poor have unequal access to the criminal justice

system, the Fourteenth Amendment is violated. Certainly, the current state of the criminal justice system unjustly forces poor defendants to accept plea bargains, keeping them from exercising their right to trial by jury.

Classism Kills

*Justice and the Poor: A study of the present denial of justice to the poor: Reginald Heber **Smith**: Free download, borrow, and streaming: Internet Archive*. (19**19**). Internet Archive. https://archive.org/details/justiceandpoora00smitgoog/page/n20/mode/2up?ref=ol

Denial of justice is not merely negative in effect; it actively encourages fraud and dishonesty. Unscrupulous employers, seeing the inability of wage-earners to enforce payments, have deliberately hired men without the slightest intention of paying them. Some of these employers are themselves poor men, who strive in this way to gain an advantage. The evil is not one of class in the sense that it gives the poor over to the mercies of only the rich. It enables the poor to rob one another; it permits the shrewd immigrant of a few years' residence to defraud his more recently arrived countrymen. The line of cleavage which it follows and accentuates is that between the dishonest and the honest. Everywhere it abets the unscrupulous, the crafty, and the vicious in their ceaseless plans for exploiting their less intelligent and less fortunate fellows. The system not only robs the poor of their only protection, but it places in the hands of their oppressors the most powerful and ruthless weapon ever invented.

These harms break both principles of justice Rawls cements, making the negative vote the sole ballot of deontology

Subpoint C:

Racial Prejudice

Greenberg, E. E. (20**20**). *Unshackling Plea Bargaining from Racial Bias*. Northwestern Pritzker School of Law Scholarly Commons. https://scholarlycommons.law.northwestern.edu/jclc/vol111/iss1/2/

When an African American male defendant tries to plea bargain an equitable justice outcome, he finds that the deep-rooted racial bias that casts African American men as dangerous, criminal and animalistic, compromises his justice rights. Plea bargaining has become the preferred process used to secure convictions for upwards of 97 percent of cases because of its efficiency. This efficiency, however, comes at a cost. The structure and process of plea bargaining makes it more likely that the historical racial bias that exists against African American male defendants will taint the negotiation process and justice outcomes. The racial profiling by the police, the presumption of guilt rather than innocence for African American men, the prosecutor's discretion when charging the defendant, and the justice negotiation's speed all contribute to the harsher negotiated sentences that African American male defendants receive compared to white male defendants accused of similar crimes. These racially tainted outcomes threaten the integrity of our justice system, and the core of our democracy.

Prejudice Violates Human Rights

The Sentencing Project. (20**18**, April 19). *Report to the United Nations on racial disparities in the U.S. criminal justice system*. https://www.sentencingproject.org/reports/report-to-the-united-nations-on-racial-disparities-in-the-u-s-criminal-justice-system/

By creating and perpetuating policies that allow such racial disparities to exist in its criminal justice system, the United States is in violation of its obligations under Article 2 and Article 26 of the International Covenant on Civil and Political Rights to ensure that all its residents—regardless of race—are treated equally under the law. The Sentencing Project notes that the United Nations Special Rapporteur is working to consult with U.S. civil society organizations on contemporary forms of racism, racial discrimination, and related intolerance. We welcome this opportunity to provide the UN Special Rapporteur with an accurate assessment of racial disparity in the U.S. criminal justice system.

Once again, Plea Bargaining violates core tenets of Rawlsian ethics

Contention 2: Intrinsic Injustice

Plea bargaining in its nature is intrinsically unjust, two reasons:

Subpoint A:

Degradation of Legal Proportionality

Bellin, J. (20**23**, February 23). Plea bargaining's uncertainty problem | Texas Law Review. Texas Law Review. https://texaslawreview.org/plea-bargainings-uncertainty-problem

Modern criminal justice scholarship is increasingly focused on plea bargaining, and with good reason.5 The Supreme Court tells us that plea bargaining "is the criminal justice system," accounting for 95% of criminal convictions.6 Critics assail the "trial penalty"—"the substantial difference between the sentence offered prior to trial versus the sentence a defendant receives after a trial"7—as the driving force of this development.8 The conventional account is that, to avoid draconian post-trial punishments, defendants have little choice but to plead guilty. Those who don't succumb to the pressure, like Angelos, Tigano, and Whitton, serve as cautionary tales. They receive long sentences primarily, it seems, for taking their cases to trial. Due to the prevalence of guilty pleas, the trial penalty's primary impact is not long sentences. Instead, the risk of an extreme post-trial sentence pressures defendants to forego trial and plead guilty. Instances of this more common application of plea bargaining receive less notice but are just as impactful.9 For example, with three prior "strikes" alleged in an indictment against him, Troy McAlister faced life in prison as he sat in jail awaiting trial on robbery charges. But in 2019, San Francisco voters elected a new District Attorney: Chesa Boudin, a former public defender who ran "on a progressive platform centered on ending mass incarceration."10 Two months after Boudin took office, his prosecutors offered McAlister a deal: Plead guilty and be released in a few weeks. McAlister's attorney opposed the deal, contending that McAlister "would have likely prevailed at trial."11 Nevertheless, McAlister pled guilty and was freed the next month.12 In 2018, the Philadelphia District Attorney's office, led by progressive icon Larry Krasner, negotiated two plea deals with a similar dynamic: a 13-year deal for a defendant facing a life sentence for a murder committed during a carjacking;13 and a 3.5-year deal for a defendant facing 40 years in prison for shooting a store owner with an AK-47 during a robbery.14

Justice is Served in Proportion

Wan, T. (20**07**). THE UNNECESSARY EVIL OF PLEA BARGAINING: AN UNCONSTITUTIONAL CONDITIONS PROBLEM AND a NOT-SO-LEAST RESTRICTIVE ALTERNATIVE. In REVIEW OF LAW AND SOCIAL JUSTICE (Vol. 17, Issue 1, p. 34). https://gould.usc.edu/students/journals/rlsj/issues/assets/docs/issue_17/07_Wan_Macro.pdf

Another criticism of plea bargaining is that it allows defendants to escape full punishment by providing them with more lenient sentences.73 This sends a message to other offenders that justice can be bought and sold74 and that they can easily "beat the system,"75 leading critics to believe that plea bargaining can weaken the deterrent effect of punishment.76 Critics further contend that the lenient sentences given to those defendants who plea bargain, and the harsh sentences doled out to similar defendants who refuse and are convicted at trial, lead to large sentencing disparities among those convicted for similar offenses, which undermine the entire criminal justice system.

Disproportionate sentencing violates Rawls' first principle of justice

Subpoint B:

Inherent Mechanisms of Bargaining are Unjust

Verner, J. (20**22**, August 1). *"Faustian choice:" Guilty Plea Agreements and the Doctrine of Unconscionability*. University of Cincinnati Law Review Blog. https://uclawreview.org/2022/04/18/faustian-choice-guilty-plea-agreements-and-the-doctrine-of-unconscionability/

Some scholars argue that plea bargains are per se unconscionable. Noted scholars Albert Alschuler and Stephen Schulhofer have written at length in support of their positions that properly applied contract doctrines preclude any bargaining process which could result in a criminal conviction.[33] At the very least, critics argue, plea agreements are "by definition, the result of coercion, made under duress by defendants facing the infamous trial tax: a risk of substantially higher penalty if convicted at trial."[34] Proponents argue that plea bargains are not per se unconscionable because the "conditions exist for an exchange that benefits both parties and harms neither."[35] Alternatively, some argue that plea bargains are not the problem—the problem arises when courts fail to properly apply contract law doctrines to the criminal procedure.[36]

Inherent to Said Mechanisms is the Destruction of Legal Justice

The George **Mason Law** Review. (20**24**, April 14). A Distant mirror: American-Style plea bargaining through the eyes of a foreign tribunal - the George Mason Law review. https://lawreview.gmu.edu/print__issues/27gmlr719/

This expert report addresses the issue of whether there is a real risk that Mr. Smith will be deprived of his right to a fair trial if he is extradited to the United States and prosecuted for various financial crimes by the US Department of Justice in the Southern District of New York. In particular, this report addresses whether plea bargaining in the US federal criminal justice system has become so pervasive and so coercive that it has effectively nullified the right to trial. The report also considers: (1) whether the differential between the sentence offered to those who plead guilty and the much more severe sentence typically imposed after trial may fairly be characterized as a "penalty" for exercising the right to trial; and (2) whether the amount of pressure that US prosecutors exert during plea bargaining may be sufficiently intense to cause innocent people to plead guilty to crimes they did not commit ("the innocence problem").[7] The answer to both questions is plainly yes.

Plea bargain as a settlement is unable to be removed from it's inherent mechanisms of injustice which violate Rawls' first principle of justice